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SEC Letter Indicates Certain Deadlines for Private Adviser Registration May Be Extended

In an April 8, 2011 letter to the North American Securities Administrators Association, Inc. that was posted to the SEC website (available at http://www.sec.gov/rules/proposed/2010/ia-3110-letter-to-nasaa.pdf), an Associate Director of the SEC indicated that the SEC was considering providing additional time for investment advisers affected by certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") to come into compliance with those provisions.

According to the letter, the deadline for registration by advisers previously exempt under Section 203(b)(3) of the Advisers Act and no longer qualifying for an exemption, may be extended. The letter states that the SEC expects final rules to be issued in advance of July 21, 2011 but that an extension "may be necessary given the time needed for advisers to register and come fully into compliance with the obligations applicable to them once they are registered."

The letter indicates that the SEC also will consider extending the date by which "mid-sized advisers" (certain advisers with assets under management of between $25 million and $100 million) will be required to withdraw from SEC registration and transition to state regulation. According to the letter, those mid-sized advisers would have until the first quarter of 2012 to report eligibility for registration with the SEC and then a grace period for registration with the appropriate state regulators.

The letter does not represent formal SEC action. Any actual extension will require formal action. The letter does not change the requirements for registration or the available exemptions, but instead only indicates that the SEC is considering an extension of certain deadlines. Accordingly, those advisers who will be required to register should proceed with steps to satisfy the requirements for registration and compliance, but should watch for additional guidance from the SEC and may want to reevaluate their current registration and compliance timetables.

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For additional information on the implications of the Dodd-Frank Act on the regulation of private equity and hedge funds, please see: http://www.kslaw.com/imageserver/KSPublic/Library/publication/ca072010.pdf and http://www.kslaw.com/imageserver/KSPublic/Library/publication/ca072210b.pdf.